



Appeal Decisions

Hearing Held on 16 April 2024

Site visit made on 16 April 2024

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2024

Appeal A Ref: APP/C1435/C/22/3297162

Appeal B Ref: APP/C1435/C/22/3297163

**Land at Beechenwood Farm, Pilmer Road, Crowborough, East Sussex
TN6 2UG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Donald Richards and Appeal B by Mrs Donna Richards against an enforcement notice issued by Wealden District Council.
- The enforcement notice, numbered BJB/C/2021/0556/CRO, was issued on 16 March 2022.
- The breach of planning control as alleged in the notice is the change of use of the Land from agriculture to a mixed use for agriculture and for the stationing of a mobile home and recreational vehicle for residential purposes.
- The requirements of the notice are:
 - (i) Stop using the Land for the stationing of a mobile home and a Recreational Vehicle for residential purposes.
 - (ii) Disconnect any/all services connected to the mobile home and the Recreational Vehicle, and remove the mobile home and Recreational Vehicle from the Land.
 - (iii) Remove all residential and domestic furniture, fixtures and fittings, including all personal chattels and effects associated with the said unauthorised use, from the Land.
 - (iv) Remove all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements from the Land.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal was brought on ground (a), an application for planning permission was deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in s174(2) (c), (d), (f) and (g) of the 1990 Act.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the allegation and its replacement with the words 'The material change of use of the Land from a mixed use for agriculture and the private keeping of horses, to a mixed use for agriculture, the private keeping of horses and for the stationing of a mobile home and recreational vehicle for residential purposes', and varied by the removal of the word 'rubble' at paragraph 5 (iv) of the notice, and the

deletion of 6 months and the substitution of 12 months as the period for compliance.

2. Subject to this correction and these variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice corrected by the deletion of the allegation and its replacement with 'The material change of use of the Land from a mixed use for agriculture, the private keeping of horses to a mixed use for agriculture, the private keeping of horses and for the stationing of a mobile home and recreational vehicle for residential purposes', and varied by the removal of the word 'rubble' at paragraph 5 (iv) of the notice, and the deletion of 6 months and the substitution of 12 months as the period for compliance.
4. Subject to this correction and these variations, the appeal is dismissed and the enforcement notice is upheld.

Background and the notice

5. Firstly, I should explain that Appeal A is proceeding on grounds (a), (c), (d), (f) and (g). However, as no fee has been paid in respect of ground (a) for Appeal B, it is proceeding on grounds (c), (d), (f) and (g).
6. The site is located to the north of Crowborough with its main access from the end of Pilmer Road down a private unmade track. A small cluster of houses lie further down this track. Thus, the appeal site lies in a gap between the housing to the south-west, this cluster of residential properties to the north-east, with generally open countryside on the remaining boundaries.
7. It is just outside the development boundary and within the High Weald National Landscape (HWNL). Along the frontage of the site there is a vehicular parking area just inside the main gates. This leads to the previously permitted storage area, with the two barns beyond. The notice targets the mobile home and a recreational vehicle. This latter vehicle was occupied and sited to the rear of the appellants garden in Pleasant View Road. It has since been removed. The mobile home is sited close to the western boundary behind an existing hedge and to the rear of other gardens in Pleasant View Road. It is surrounded by a small area fenced with wire containing poultry and poultry housing.
8. From the evidence it is clear that the land is in a mixed use for the private keeping of the appellant's and the occupier of the mobile home's horses, for agriculture and the residential occupation of the mobile home and recreational vehicle. It is therefore necessary to correct the allegation in the notice to reflect this and the materiality of that change. For the sake of clarity, I shall delete the allegation and replace it with the following words; 'The material change of use of the Land from a mixed use for agriculture and the private keeping of horses, to a mixed use for agriculture, the private keeping of horses and for the stationing of a mobile home and recreational vehicle for residential purposes'.

9. The mobile home has not been sited on a formal concrete base and no other operational development has been carried out to facilitate its residential use. Therefore, compliance with the notice is unlikely to result in the generation of rubble. In the light of this, I shall vary the steps required, to remove the reference to rubble at paragraph 5 (iv) of the notice. The Parties agreed that I can carry out these alterations without causing injustice.

Ground (c)

10. The appeal has been lodged on ground (c), that the matters stated in the notice do not constitute a breach of planning control. This is a legal ground where the burden of proof is on the appellant to make out the case that there has not been a breach of planning control. The relevant test for the evidence is on the balance of probability.
11. At the Hearing the Appellants confirmed that as the recreational vehicle has now been removed from the site, they no longer wished to pursue the ground (c) appeal, in respect of this vehicle. I shall therefore only consider the matters that relate to the mobile home for ground (c).
12. The gist of the appellants case is that the mobile home has been and continues to be used in connection with the agricultural and equestrian use of the land. All of the occupiers of the mobile home have assisted with both the day-to-day agricultural activities and providing security for the farm. Therefore, in their view planning permission is not required by virtue of Part 5 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.
13. This permits the use of land, as a caravan site in certain circumstances. These are set out in the First Schedule of the Caravan Sites and Control of Development Act 1960. Exemptions at Paragraph 6 of this Act include, that a site licence shall not be required for the use as a caravan site of agricultural land, for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.
14. There are two barns, one being subdivided into internal loose boxes for the horses. The second is used as a workshop and for the storage of agricultural equipment and tools. There were also a small number of pens for newly born lambs and mothers. The area of permitted outside storage was fenced from the grazed areas.
15. The site is some 5.6 hectares of mainly pasture with an additional approximately 2.5 hectares rented. From the evidence given, there are some 7 recreational horses and ponies, 50 ewes, a very small number of chickens, 4 peafowl and 6 geese. The ewes are all due to lamb across 3 months of each year.
16. The appellant for Appeal A is a retired taxi driver and his wife (Appeal B) works part time at a doctor's surgery. It is understood that the occupants of the mobile home have, over the years, lived rent free in exchange for 15 to 20 hours assistance on the farm. This has taken the form of assisting with lambing, mucking out stables, turning out horses, feeding the livestock and in quieter times fencing and general maintenance. The current occupier works in the construction industry and assists in the evenings and at weekends and it is

understood that this pattern has been repeated over the years with the mobile home remaining on the appeal site all year round.

17. I recognise that the breeding of sheep would provide the appellants with an income. However, during the Hearing the appellants agreed that the farming activity is more akin to a hobby, than an agricultural business. This seems to be supported by the limited stocking levels, the lack of any supporting business accounts, a Farm Business plan or any other business-related evidence to support the appellants claim. Moreover, both appellants and the various occupants of the mobile home, have all had additional unrelated employment.
18. Although I recognise that breeding sheep on any scale, will require additional care and attention during the lambing season and veterinary assistance may be required at any time. The mobile home understandably provides a convenient solution, but I have little before me to suggest that this could not be provided by the appellants, or others already living in the area.
19. Turning to security, I recognise that the mobile home presence may help to deter criminal activities such as theft from the premises. I have little evidence however, to explain the nature of the equipment or goods that need to be protected, or why an appropriate level of security could not be provided by improved cameras, or in other ways, given the appellants proximity to the site. Moreover, the siting of the mobile home within the site and away from the two barns, reduces its visibility from the main access and thus any visual deterrent. I am therefore not satisfied that, on the evidence I have, that the occupation of the mobile home for the purposes of providing security is critical.
20. Overall, in my judgment and on the particular evidence before me, I find that on the balance of probabilities, the appeal site does not represent a viable farming operation that requires a person to be employed on the land for either security, or animal welfare during any particular season. The appeals on ground (c) therefore fail.

Ground (d)

21. The appeal is proceeding on ground (d) and is a claim that the development enforced against, has become immune and therefore lawful through the passage of time. The relevant time for this appeal, is 10 years before the enforcement notice was issued. This is one of the legal grounds of appeal against an enforcement notice, where the burden of proof lies with the appellant, the relevant test of the evidence being on the balance of probability. The notice was issued on 16 March 2022, so this is the material date. Accordingly, the parties agreed that the relevant period is between 16 March 2012 and 16 March 2022.
22. It is not in dispute that the mobile home has been on the site for many years, albeit that it has been replaced at some time. It is therefore the way the mobile home has been used that is disputed. I have already found that the mobile home is not permitted development by virtue of Part 5 of the GDPO. It is the appellants case in the event that the ground (c) appeal fails, the mobile home has still been occupied throughout the relevant period. Their evidence includes a number of statements of truth from previous occupants and others who have had knowledge of the site.

23. One striking feature of the appellants evidence is that it is not in the form of sworn affidavits. It is understood that this was not possible initially due to COVID 19 restrictions. However, it is not clear why this was not resolved as the restrictions were lifted. Sworn evidence given on oath carries with it the risk that giving false evidence, could render the individual liable to prosecution. Accordingly, sworn evidence will usually carry greater weight than unsworn evidence. Accordingly, these statements will carry less weight.
24. The appellants initially set out their submissions and from the outset, accepted that the dates provided in some of their evidence regarding the occupation of the mobile home may overlap, and there may be some gaps in the dates. Nonetheless, they consider that it represents the position to the best of their knowledge and is sufficient for ground (d) to be allowed.
25. Turning to the evidence itself, the various submitted statements, set out how the mobile home has been occupied over the relevant period. The current occupier and a previous occupier, both attended the Hearing and spoke on behalf of the appellants.
26. To my mind, a number of matters arise in relation to this evidence. The dates during the relevant period provided are generally imprecise. The appellants son is understood to have lived in the mobile home between 2011 and 2013. Their daughter then moved in until an unspecified date when she moved out and their son moved back in. He remained living in the mobile home until early 2019. It is pertinent however, that there is no statement from the appellants daughter to give details about her period of occupation and no explanation for this omission. The appellants rely on evidence given by others.
27. The evidence provided by the farrier is also imprecise, as he states that the mobile home only 'appears to be occupied' but provides no further explanation or details.
28. I recognise that the Council provide no contradictory evidence of their own to cast doubt on the appellants claim. However, there is highly detailed evidence provided by an interested party, which suggests that there were a number of periods where the mobile home was unoccupied for weeks or months between residents. Doubt is also cast on what essential services were provided to the mobile home to support residential occupation and when they were connected.
29. I recognise that this conflicting evidence, in itself, is not decisive. Be that as it may, the decisive point is whether in the light of the cumulative weight of evidence, there are sufficiently clear, detailed and consistent facts in support of the appellants claim on the balance of probability.
30. Overall, for the above reasons I am not satisfied that the appellants evidence is sufficiently clear and unambiguous, to demonstrate that on the balance of probability, the mobile home has been in continuous residential occupation, such that the Council could have taken enforcement action at any time throughout the relevant period. The appeals on ground (d) therefore fail.

Appeal A - Ground (a) and the deemed application

31. The notice targeted both the residential use of the mobile home and the recreational vehicle. Notwithstanding that the recreational vehicle has since been removed from the site, these both still form part of the deemed application for the purposes of ground (a).

Main Issues

32. Having considered the evidence, I consider the main issues are:

- The effect of the development on the character and appearance of the area and the High Weald National Landscape (HWNL);
- The effect of the development on the living conditions of local residents; and
- The effect of the development on the Ashdown Forest Special Protection Area.

Reasons

Policy context

33. It is agreed that the Council's up to date Development Plan comprises the Wealdon Local Plan 1998 (the LP) and the Wealdon Core Strategy Local Plan (2013) (the CS). The Council is in the process of updating the Local Plan, however following examination in January 2019 this was found to be unsound and it was withdrawn. Its policies therefore carry no weight. In the light of this, the Council has based its reasons for issuing the notice on saved Policies GD2, DC2, DC17, DC22, EN6, EN27, TR3 and TR16 of the LP and saved Policies WCS6, WCS12, and WCS 14, of the CS.
34. It is common ground between the parties, that the Council is currently unable to demonstrate a five-year housing land supply. The Council's policies that relate to the supply of housing are therefore out-of-date. Paragraph 11 (d) of the Framework is therefore engaged and permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the framework taken as a whole.
35. Despite their age the Council's remaining saved policies confirm the Council's approach to development within such designated landscapes. Broadly Policy EN6 and EN27, requires that the development responds to the context of the relevant area and requires proposals to conserve and enhance the natural beauty of the HWNL. Policies DC2 and DC22 limit development in these areas unless, there is an essential farming need. These policies generally require the conservation or enhancement of landscape character and a positive contribution to the overall character and appearance of the area. This is broadly consistent with the requirements of national policy, in so far as conserving and enhancing landscape and scenic beauty in National Landscapes which attract the highest level of protection that the planning system can provide. Accordingly, I continue to afford significant weight to the remaining saved policies in the adopted CS and LP.
36. I note however, that policies TR3 and TR16 of the LP do not appear to be relevant to the reasons why the Council issued the enforcement notice, or the evidence provided at the Hearing. Accordingly, I find no conflict with these Policies.

Character and appearance

37. As set out above, the Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes such as the HWNL. The scale and extent of development within all these

designated areas should be limited, while development within these settings should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

38. The location and description of the appeal site are set out above. From the site visit the prevailing character of the area changes abruptly from the moderately dense residential development that is characteristic of this part of Crowborough, to the significantly more rural character of the appeal site and the surrounding countryside. The appeal site therefore provides an important transition from the existing development and the countryside.
39. I acknowledge that the site already has several agricultural style buildings which appear appropriate in this location. However, if allowed the development before me would result in the permanent siting of a large static residential caravan and a residential recreational vehicle, together with the normal day to day residential paraphernalia associated with such uses in two separate areas of the appeal site. Even if the recreational vehicle did not return, the mobile home and associated activity would remain.
40. I have already found that there is no need for the mobile home or recreational vehicle on either security, or agricultural need grounds. In my judgement the appeal development without justification, unacceptably extends residential development into this part of the HWNL, eroding this important transition into the countryside.
41. Drawing all of the above points together, I find that the siting of the mobile home and the recreational vehicle, together with the usual associated domestic paraphernalia, is significantly at odds with existing development and the prevailing rural character of the HWNL. Accordingly, it causes significant harm to the character and appearance of the area and the HWNL, failing to preserve or enhance the natural beauty of the area. The development is therefore contrary to Policies GD2, DC2, DC17, DC22, EN6 and EN27 of the LP and saved Policies WCS6, WCS12 and WCS 14 of the CS. These policies in combination seek to resist development in the HWNL other than where essential for farming whilst seeking to ensure that new development conserves and enhances natural beauty.

Living conditions

42. At the Hearing the Council outlined their concerns that the presence of both the mobile home and the recreational vehicle, in such close proximity to the rear gardens of neighbouring properties, results in disturbance from both their presence and occupation.
43. Their concerns did not relate to any particular properties, but primarily relate to associated vehicle disturbance, noise and additional light nuisance. It is pertinent that the recreational vehicle has been removed and it is understood that the current occupier of the mobile home does not drive. That said, I recognise that future occupiers may have different circumstances. It is understood that if any complaints have been made to the Council, they have not resulted in a formal Environmental Health (EH) investigation. Moreover, EH were not consulted either before the notice was issued, or as part of the appeal process, so they have provided no comments.

44. Nonetheless, I have reviewed all third party written comments. I note that some concern has been expressed about the visual impact of the development from gardens, reference to dogs barking and a party held in one of the barns. However, they are non-specific, and it is not clear from these whether they relate to the existence of the mobile home or recreational vehicle, or the previous use of the field for camping.
45. From the site visit there is a substantial existing hedge between the mobile home and the nearest properties which provides some visual and acoustic screening. This is understood to be owned by the appellants and thus within their control. Therefore, it would be possible to provide additional screening by retaining and if necessary, enhance this hedge through a suitably worded condition, if the appeal were to be allowed.
46. Overall, there is no empirical or factual evidence before me, to assess how the appeal development affects the living conditions of nearby residents, with any degree of certainty. For these reasons and based on the evidence before me, I find no conflict with the Council's policies in this regard.

Overall balance

47. I acknowledge that additional residential units would make a small, but positive contribution to the supply of housing, in the Council's area. There are also the personal benefits of providing a home for the current occupier of the mobile home and this carries significant weight.
48. However, balanced against these benefits, the Framework makes clear that great weight is to be given to conserving and enhancing landscape and scenic beauty in national landscapes, as these attract the highest status of protection. The appeal development, without agricultural justification, fails to conserve or enhance the landscape and scenic beauty of the area. I have attributed significant weight to this harm.
49. I have found no harm to the living conditions of neighbouring residents, and this weighs neutrally in the balance.
50. Overall, in my judgement, the combination of factors in favour of the development, in the context of this individual case, are not sufficient to clearly outweigh the significant harm I have identified to the character and appearance of the area and the HWNP and the resultant conflict with the development plan.
51. It follows that it is still necessary to consider whether a temporary grant of planning permission would be appropriate. Planning Policy Guidance makes clear that a temporary condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period. The appellants have suggested that 4 years would be appropriate.
52. I recognise that the Council is working on a new Local Plan. However, there is considerable uncertainty over the timescale. Thus, I have no evidence before me to suggest that any of the circumstances are likely to change during this, or any other temporary period. To conclude, given the harm I have identified, a temporary permission would not be appropriate in the particular circumstances of this appeal.

53. I am very mindful of the occupier of the mobile home's personal circumstances and the effect that dismissing these appeals are likely to have. I have carefully considered the Human Rights issues that are pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of his rights.

Other considerations

Ashdown Forest Special Protection Area (SPA)

54. The Habitat Regulations 2017 require an assessment to be undertaken as to whether a proposal would be likely to have a significant effect on the interest features of a protected site.
55. Following the Hearing, the appellants submitted a signed unilateral undertaking dated 23 April 2024. This undertaking sets out an agreement to pay the appropriate Council's Strategic Access Management and Monitoring Strategy contribution, within 14 days of planning permission being granted, to the Council. This is towards the provision of access mitigation measures, in respect of the Ashdown Forest SPA, as a planning obligation.
56. However, as I have already identified significant harm to the character and appearance of the area and HWNL such that the appeal should be dismissed, there is no need to consider this further.

Ground (f)

57. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)), or as the case may be, to remedy injury to amenity (s173(4)(b)). Although the recreational vehicle has since been removed, given the deemed application it still needs to be considered under this ground.
58. In this case, the notice is directed towards the residential use of the mobile home and the recreational vehicle, with the purpose of the notice, to remedy the breach of planning control by the cessation of the use and the removal of the mobile home and the recreational vehicle, residential and domestic furniture, fixtures and fittings, including all personal chattels and effects associated with the unauthorised use, and all materials, (rubble), rubbish, debris, tools and equipment arising from compliance with the other steps.
59. The requirements of the notice were discussed at the Hearing as the appellants submit that they are vague and do not sufficiently identify the items that need to be removed, given the existing storage permission granted on 10 September 2018 (WD/2018/0592/F). The Council clarified that it is only the items connected to the alleged use that need to be removed. The wording of the requirements seems to be clear as they refer specifically to the 'unauthorised use' and 'compliance with the other steps'. Moreover, apart from the reference to 'rubble' dealt with above, there is nothing before me to suggest that the appellants have misunderstood the remaining requirements, or that they go beyond what is necessary to achieve the purpose of the notice.
60. In so far as the reference to 'rubble', the appeal on ground (f) succeeds to this limited extent and the requirements of the notice will be varied accordingly.

Ground (g)

61. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 6 months is too short, due to the shortage of affordable housing in the District, together with the long waiting lists, as claimed by the appellants. The appellants have not suggested an alternative timescale, preferring a temporary planning permission which I have already considered above. However, I recognise that because of my findings, the occupier of the mobile home will need to look for suitable alternative accommodation which in the light of the waiting lists could take some time.
62. I have considered whether a period of more than 12 months would be justified. However, any extension beyond 12 months would be tantamount to a temporary grant of permission without conditions, which I have already found would not be appropriate, given the harm I have identified.
63. For the above reasons, I consider that a period of 12 months is a more proportionate and reasonable time to achieve compliance with the notice. To this extent the appeal on ground (g) succeeds and I shall vary the notice.

Conclusion

Appeal A

64. For the reasons given above, I conclude that appeal A should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

65. The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out in the Formal Decision.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Colin Begeman *MsC; MRTPI*
Mr Kieth Madonald
Mr Donald Richards
Mrs Donna Richards
Mr Nawrocki Milosch
Mr Paul Boast

Planning Consultant
Assisting agent
Appellant
Appellant
Occupier
Previous occupier

FOR THE LOCAL PLANNING AUTHORITY:

Mr Niall Mileman *Ba Hons post grad dip; MRTPI* Senior Planning Enforcement Officer
Mr Kieran Balmer Planning Enforcement Officer